



புதுச்சேரி மாநில அரசிதழ்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 40/AIL/Lab./T/2020,
Puducherry, dated 17th March 2020)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 06/2011, dated 30-01-2020 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Larsen Toubro Ltd., Sedarapet, Puducherry and Thiru S. Mani (*died*), Rep. by his Legal heir Selvajothi, Tamil Nadu, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

BEFORE THE INDUSTRIAL TRIBUNAL AT
PUDUCHERRY

Present : Thiru V. PANDIARAJ, B.SC., LL.M.,
Presiding Officer.

Thursday, the 30th day of January, 2020.

I.D. (L) No. 06/2011

S. Mani (*died*),
Rep. by his Legal heir Selvajothi,
No. A-378, Main Road,
Vanur Post and Taluk,
Tamil Nadu. . . Petitioner

Versus

The Managing Director,
M/s. Larsen Toubro Ltd.,
Sedarapet, Puducherry. . . Respondent

This industrial dispute coming on 21-01-2020 before me for final hearing in the presence of Thiruvalargal M. Veerappan and William Jerone Vincent, Counsels for the petitioner, and Thiruvalargal M. Vaikunth, S. Kamalini, R. Vikineshraj and R. Elamparuthi, Counsels for the respondent, up on hearing, up on perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government of Puducherry as per the G.O. Rt. No. 46/AIL/Lab./J/2011, dated 03-04-2011 for adjudicating the following:-

(a) Whether any employer and employee relationship exists between Thiru S. Mani and the management of M/s. Larsen and Toubro Ltd., Puducherry?

(b) If exists, whether the dispute raised by Thiru S. Mani, over non-employment is justified or not?

(c) If justified, what relief the petitioner is entitled to?

(d) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. *The brief averment of the petition filed by the petitioner:-*

This petitioner Selvajothi is the daughter of the deceased employee by name Mani. The deceased employee by name Mani joined the service in the respondent company on 31-05-1993 as Office Boy. Since, he was appointed as Casual Labour, no order of appoint was given to him. During 1996 he has been posted as Telephone Operator to attend the incoming and outgoing calls. He attended the dispatch work and courier works in the Office. While so, on 23-05-2009 he was called by the then Manager Thiru B.P. Reddy (Personnel) Department and informed that he was dropped from his service due to his diabetic problem. He has performed his duty from 1993 to 2009 continuously for more than 15 years to the satisfaction of the respondent management and there was no adverse remark against him. Though he was appointed as Casual Labour, he was paid ₹ 6,500 per month as salary on regular basis and he has received periodical bonus also. His position can be ascertained from the muster role and attendance register maintained by the company. Though he seek a copy of the same, the management refused to give the copy of the abovesaid documents and hence, the abovesaid documents were unable to be produced before this Court. He had worked under the various General Managers namely, Thiru Warrior, Thiru Naklir, Thiru Dada Guptha, Thiru Amrudeen, Thiru Balachandar and Thiru B.M. Karunanithi. He was a regular employee of the respondent company. His PF Account No. PC/393/3777. He has paid ESI contribution also and availed the ESI benefits such as, ESI leave and medical treatment.

He has rendered more than 15 years unblemished service. He was discharged from service abruptly and refused employment on health ground against the provisions of Labour Laws and also against the principles of natural justice and also against the Standing Orders of the company. The act of the respondent management is unfair labour practice. He has been discharged from service without any memo, show cause notice and without any enquiry. The management failed to comply the provisions of the ID Act, 1947. The deceased employee by name Mani made several representations to the respondent management. He has made personal request also. He has met the Manager of the respondent management on several occasions, but, the respondent management acted in an autocracy manner, without following the rule of law and the principles of natural justice. He has made a representation on 19-08-2009 before the Conciliation Officer, Puducherry. The Conciliations proceedings also ended in failure and the report was sent to this Court. The act of the respondent management is against the law. Since, the employee by name Mani and his wife died during the pending proceedings, this petitioner impleaded herself and seeks a compensation of ₹ 10,00,000 *in lieu* of the original claim of reinstatement and backwages with all other attendance benefits.

3. The brief averment of the counter filed by the respondent:-

(i) The allegations levelled by the petitioner/claimant is denied as false and vexatious. The deceased petitioner/employee by name Mani was not a permanent employee of the respondent company from 31-05-1993 as alleged in the claim petition. The allegation of denial of duty on 25-03-2009 was also denied as false. The respondent company engaged in the manufacture of Transmittance Line Tower parts. It has so many permanent employees and contract employees also the name of this petitioner was not find place in the list of permanent employees. He was never ever treated and recognize as employee of permanent nature. One Mr. Radhakrishnan is one of the private contractors engaged by this respondent. This petitioner worked under him and he was not at all employee under the company at any point of time or date. He was a casual worker under the abovesaid Radhakrishnan and he carried out the sundry work within the premises of the respondent company, and as such this respondent deposited PF and ESI contributions only as a matter of welfare measure and it was complied as a matter of statutory mandate. The payment of contribution would not entitle the deceased petitioner by name Mani to claim any right against this respondent and he cannot be termed as permanent employee of the respondent company.

The deceased petitioner by name Mani has availed ESI leave from 19-02-2009 to 26-02-2009 for his alleged sickness. Even then he worked on these days and received the wages from the contractor by name K. Radhakrishnan as a daily wages casual workmen. The abovesaid contractor by name Radhakrishnan getting aggrieved over the fraudulent act of the deceased petitioner by name Mani, quit him from his daily work on his own accord. Further, the contractor found the deceased petitioner by name Mani sleeping several times during the working hours. Further, the contractor was warned this petitioner Mani for his irregularity, lethargic and negligent attitude, misbehaviors and for misdeeds with his superiors and fellow Casual Labours. There is no question of refusal of employment and discharged of employment, as there is no permanency in service with the respondent management. This respondent need not give any employment or backwages to the deceased petitioner Mani and no such question would arise as he was not under the employment with the respondent management. This petition is fit for dismissal for non-joinder of necessary parties. This petitioner can claim anything only against the contractor by name Radhakrishnan and he cannot made any claims against this respondent. Since, the original petitioner by name Mani expired, a right of claim also goes out under the legal maxim "Actio Personalis Moritur-cum-Persono". The claim of compensation made by this petitioner is not maintainable. The implement of this petitioner by name Selvajothi is also against the law and hence, this petition has to be dismissed.

4. On the side of the petitioner only witness was examined and Ex.P1 to Ex.P20 was marked. On the side of the respondent only one witness was examined no documents were marked.

5. The petitioner side Counsel argued that the present petition is nothing but, the daughter of the deceased employee by name Mani. It is argued by the petitioner Counsel that the deceased Mani was employed in the respondent management on 31-05-1993 and he was denied to attend the work on and from 26-03-2009 by the management. It is argued by the petitioner Counsel that the denial of work to this petitioner is nothing, but, unfair labour practice and therefore, this petitioner has to be suitably compensated with sum of ₹ 10,00,000 and with all other benefits.

6. The respondent side Counsel failed to appear and put forth his case on behalf of the respondent management.

7. Points for consideration:

Whether any employer and employee relationship exists between Thiru S. Mani and the management of M/s. Larsen and Toubro Ltd., Puducherry? If exists, whether the dispute raised by Thiru S. Mani over non-employment is justified or not? If justified, what relief the petitioner is entitled to? To compute the relief if any, awarded in terms of money if, it can be so computed?

8. On the Point:

The petitioner (PW1), the daughter of the deceased petitioner Mani, has deposed that her father was employed in the respondent management on 31-05-1993 and he has been discharged from his service on and from 26-03-2009, on the ground of diabetic problem. She further deposed that her father was discharged from his service without any memo, notice and without any enquiry. She has further deposed that the refusal of work to her father on 25-03-2009 by the then Manager without any valid ground is nothing but, an arbitrary exercise of autocracy by the management against her father. She further deposed that she was entitled for compensation as a legal heir of her father *in lieu of* the original claim of reinstatement with full backwages, bonus and all other attendant benefits. *Per contra*, RW1 Assistant Manager, (Industrial Relations) of the respondent management deposed that the deceased Mani was a contract labour under the contractor K. Radhakrishnan and he was not an employee of the company at any point of time. Therefore, this Court has to find out whether the deceased petitioner by name Mani was an employee or not under the respondent management?.

9. To substantiate the evidence of PW1, the petitioner has marked Ex.P1 to Ex.P20. On perusal of Ex.P1 to P14 it is found that the petitioner by name Mani has paid ESI contribution from 1993-1994 to 2007-2008 to the ESI Corporation for the abovesaid period. Further, it is also found that the employer has also paid their share of contributions to the ESI Corporation. Thus, the Ex.P1 to P14, this Court was able to find out that ESI contributions were paid by the employer as well as employee. The contribution has to be paid for each and every employee under the provisions of ESI Act., either by the principle employer or by the contractor. Furthermore, as per the provision, even if, the contractor failed to pay contributions towards the contract employees, the principal employer/company has to pay the contributions and it has to deduct the same from the salary of the relevant employee and if not, it will be subjected to penal prosecution for failure of

non-payment of contribution under the ESI Act. Therefore, the payment of contribution by the management cannot be considered as a document to show the relationship of employee and employer between this petitioner and the respondent. Therefore, this Court was not able to come to the conclusion that he was an employee under the respondent management.

10. PW1 has deposed that her father was employed under the respondent management from 31-05-1993 to 25-03-2009 and he has received the wages and bonus periodically. If, this part of evidence adduced by PW1 is true, then definitely she could very well produce the salary receipts and bonus receipts, before this Court, from which this Court can come to the conclusion that he was an employee of the respondent management. But, she has not produced the same. Furthermore, she has failed to produce the copy of the attendance register or muster role registers. Further, she has failed to get the same from the company and failed to produce the same before this Court. Above all, she has not taken any steps before this Court to produce the same by filing call for documents petition from the respondent. Furthermore, on perusal of Ex.P15 to Ex.P20, this Court was not able to come to the conclusion that the deceased petitioner Mani was an employee under the respondent management. Above all, this petitioner (PW1) herself has admitted that she has failed to produce any document to show that the employment of her father under the respondent management. All these things would go to show that she has failed to prove her case.

11. Furthermore, RW1 has deposed that the deceased petitioner Mani was a contract employee under the contractor K. Radhakrishnan and the deceased petitioner Mani has performed sundry works only. To deny the same, this petitioner has to take steps to implead the so called contractor by name K. Radhakrishnan. But, this petitioner failed to take any steps to implead the so called contractor by name Radhakrishnan. The failure of this petitioner in this regard, would also go to show that the case of the petitioner as false one. Thus, from the abovesaid evidences and documents, this Court was able to come to the conclusion that there was no relationship of employee-employer between this petitioner and the respondent management.

12. At this juncture, this Court inclined to go through the verdict given in the following citation 2016 LLR 1081 (Madras High Court) in

M/s. Enoest Pumps India Private Limited

Vs.

Deputy Director,
Industrial Safety and Health and others.

Wherein, the Hon'ble High Court has held that employer-employee relationship has to be decided first by the industrial adjudicator and then he has to proceed with other issues. Furthermore, the Hon'ble High Court, Madras held that "the onus of proof for existence of relationship of employer-employee lies on person setting plea on its existence", in the case of

N. Veerappan

Vs.

Chairman and Managing Director,
Punjab and Sind Bank,

New Delhi and others reported in 2014 LLR 151

13. Therefore, as per the abovesaid citation this petitioner/claimant here in this case has to establish the abovesaid relationship by producing documents and evidences. But, here in this case, this petitioner has not filed the appointment order, to show the relationship of employer-employee. Further, he has not produce the termination order issued by the respondent/management. If at all, the deceased petitioner Mani was employed by the management he could very well produce the same. Since, he has failed to produce the same, this Court comes to the conclusion that this petitioner has failed to prove the existence of employer-employee relationship. Furthermore, this Court has gone through the judgment rendered by the Hon'ble Jarkhand High Court in the case of

Their Workmen, Bihar Colliery Kamgar Union
Appellant

Vs.

M/s. Bharat Coking Coal Ltd. and another

wherein, in the 13th paragraph runs as follows:

"It is now well settled that if, the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Tribunal answered both the above questions in affirmative and held that the workmen are direct employees of the management. We are of the view that the Tribunal ought to have examined the matter in the light of the above

well-settled principles. On careful consideration of the evidence and materials on record, we are of the view that the Industrial Tribunal committed a serious error in arriving at the finding that because of non-registration of establishment under section 7 of the CLRA Act and non-possession of licence under section 12 of the said Act, the contract labour system was a sham or camouflage".

14. Furthermore, the 20th paragraph runs as follows "Before the Tribunal, the sponsoring Union filed an application to direct the management to produce the attendance register of the concerned persons. Since, the management did not produce the attendance register, the Tribunal drew the adverse inference against the management that the management has withheld the same because if, the attendance register had been produced then the claim of the concerned persons of having worked for more than 240 days would have been clearly established. Such an inference drawn by the Tribunal is erroneous in the light of the decision of Hon'ble Supreme Court rendered in the case of Manager, RBI, Bangalore v. S. Mani & Ors. [(2005) 5 SCC 100].

15. As per the abovesaid citation the workmen has to prove that he was in regular employment of the management. But, here in this case, the petitioner failed to prove the same. As per the abovesaid citation this Court cannot adverse inference against the management as this petitioner has not taken any steps to call for the documents from the respondent and he has not taken any steps to produce the same before this Court. Furthermore, as per the abovesaid citation he has not produced sufficient evidence to get pass in the well recognized test to find out the relationship of employer-employee. Thus from the abovesaid analysis and consideration, this Court comes to the conclusion that this petitioner failed to prove the existence of employer-employee relationship between the deceased petitioner and the respondent. Hence, this Court comes to the conclusion that this petitioner failed to prove her case and therefore, it was decided that she was not entitle for any relief as prayed in the claim petition.

16. In the result, the industrial dispute raised by this petitioner against the respondent management, over the non-employment of Mani is decided as unjustified. No cost.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the open Court, on this the 30th day of January, 2020.

V. PANDIARAJ,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness:

PW1 — 03-10-2019 Selvajothi

List of petitioner's exhibits:

Ex.P1 — 1993-1994 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P2 — 1994-1995 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P3 — 1995-1996 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P4 — 1996-1997 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P5 — 1997-1998 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P6 — 1998-1999 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P7 — 1999-2000 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P8 — 2000-2001 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P9 — 2001-2002 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P10 — 2002-2003 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P11 — 2004-2005 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P12 — 2005-2006 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P13 — 2006-2007 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P14 — 2007-2008 Original copy of the A/c. No. PC/393/377 of Employees Provident Fund Scheme.

Ex.P15 — 31-05-1993 Copy of ESI, Identity Card issued to the Employee/petitioner.

Ex.P16 — 29-05-2009 Copy of the representation given to the management by the petitioner.

Ex.P17 — 19-08-2009 Copy of the representation given to the Labour Officer (Conciliation) by the petitioner.

Ex.P18 — 07-05-2010 Copy of the representation given to the Labour Officer (Conciliation) by the petitioner.

Ex.P19 — 29-01-2010 Letter address to M/s. Larson and Toubro Ltd., by the employees State Insurance Corporation Branch Office, Gandhi Nagar, Puducherry.

Ex.P20 — 02-12-2010 Copy of the failure report issued by the Conciliation Officer.

List of respondent's witness:

RW1 — 18-11-2019 R. Kannan

List of respondent's exhibits: Nil

V. PANDIARAJ,

Presiding Officer,

Industrial Tribunal-cum-Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Ms. No. 02/Lab./SW/A3/2020,
Puducherry, dated 08th May 2020)

NOTIFICATION

Thiru J. Vijayakumar, Assistant Director (Training), Labour Department, Puducherry, is admitted into retirement on attaining the age of superannuation from Government Service with effect from the afternoon of 31-05-2020.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government
(Labour).